

Mr. Schutze, chairman of the select committee to whom was referred the veto message of the Governor on House bill No. 177, submitted the following report :

COMMITTEE ROOM, }  
Austin, Nov. 29, 1871. }

Hon. WM. H. SINCLAIR,

Speaker of the House of Representatives :

SIR: Your special committee, to whom was referred House bill No. 177, "An act entitled an act to amend an act entitled 'an act

to provide for the mode and manner of conducting elections, making returns, and for the protection and purity of the ballot box,' approved August 15, 1870," and the message of his Excellency the Governor, returning said bill with his objections thereto, have carefully considered the same, and beg leave to report that in their opinion the present Constitution of the State of Texas did not go into force and effect until the Congress of the United States had finally passed upon the same, and until civil government had been inaugurated in this State. That event took place on the twenty-sixth day of April, 1870, and the present Legislature does not terminate until the 26th day of April, 1872. It is true that section four article three of the Constitution reads: "The members of the House of Representatives shall be chosen by the qualified electors, and their term of office shall be two years from the day of general election."

But your committee assert that no general election has ever been held *under that Constitution*; that the election of members of the present Legislature in November 1869 took place not by virtue of the Constitution, but in every respect by the orders of a military commander. No branch of the constitutional government of Texas was recognized by the United States Government *as elected* until the twenty-sixth day of April 1870, when the general government formally relinquished its military jurisdiction over the civil authorities and permitted the Constitution of the State to go into force and effect. The so-called provisional session of the Legislature in February, 1870, was neither provided for by the Constitution nor called by the Governor. The Major General commanding the Fifth Military District convened them in session by general order No. 5, dated Austin, Texas, January 11, 1870, notwithstanding the Constitution of the State had been adopted by the people in November, 1869. The House of Representatives was not permitted to organize under the Constitution. The Speaker was not elected by the Representatives as prescribed by the Constitution, but had been appointed by Major General J. J. Reynolds, and neither branch of the Legislature was permitted to judge of the qualifications of its own members. Contested election cases were decided by a military commission appointed in pursuance of general order No. 24. So extremely careful was the general government in its efforts to evince to the people of Texas that no Constitution of their own *was in existence at that time*, that the Representatives of the people were not allowed to appropriate one cent of the people's money—the taxes paid into the State Treasury. The *per diem*, mileage and contingent expenses of that session of the Legislature were wisely, kindly and cautiously provided for by special order No. 34, dated Austin, Texas, February 14, 1870, which reads as follows:

## [Extract II.]

"The sum of thirty-five thousand dollars currency, or so much thereof as may be necessary, is hereby appropriated from the Treasury of the State of Texas to pay *per diem* and mileage of the members of the present session of the Legislature and also to pay the officers and employes, and to defray the printing and contingent expenses of the Legislature. The certificate of the Secretary of the Senate and Clerk of the House of Representative, approved by the presiding officers of their respective bodies, shall be a sufficient voucher for the Comptroller of the State to draw his warrants on said appropriation; but no greater sum than five thousand dollars shall be expended from this appropriation for printing and contingent expenses of the present session of the Legislature. The mileage and *per diem* of members shall be as established by the late Convention.

"By command of J. J. REYNOLDS, Brevet Major General:

"H. CLAY WOOD,

"Assistant Adjutant General.

"CHARLES E. MORSE, Acting Assistant Adjutant General."

The Commanding General is particularly careful here to avoid the word *Constitution* in his conclusion. The mileage and *per diem* of members shall be as established by the late *Convention*.

All these and numerous other facts show conclusively that the Constitution did not become valid or binding until civil government was inaugurated on the twenty-sixth day of April, 1870, and neither section four, article three, nor any other section of the Constitution can have retroactive force. Your committee further submit that they deem it wise and proper that the first general election under the Constitution be held at the time of holding the next Presidential election. Enormous expenses would thereby be saved to the State and no material interest be impaired. It might be asserted that with the legal termination of the Legislature, on the twenty-sixth day of April, 1872, one branch of the government would cease to exist until the next Legislature be elected. We beg leave to state that, under existing laws, the Legislature could not lawfully meet after that time, except in a called session. Should events of such magnitude and importance occur after the twenty-sixth day of April, 1871, and before the next Legislature be elected, as would justify the Chief Magistrate to convene the Legislature in extra session, then, according to the established principles of organic law, the incumbent in office would even be compelled to hold over the legal term until his successor has duly qualified.

In view of the facts stated above, your committee respectfully

recommend that House bill No. 177 be reconsidered, and that the objections of the Executive be sustained.

Very respectfully,

JULIUS SCHUTZE, Chairman,  
SLAUGHTER.

Dissenting:

A. J. BOOTY.

The question being, "Will the House on reconsideration agree to pass the bill?" House bill No. 177, to be entitled "An act to amend an act entitled 'an act to provide for the mode and manner of conducting elections, making returns, and for the protection and purity of the ballot box,'" "

Mr. Lane moved a call of the House. Call sustained.

Absent, not excused—Messrs. Bonner, Haswell, Prissick and Young.

On motion of Mr. Grothaus the Sergeant-at-Arms was dispatched for the absentees.

On motion of Mr. R. Allen the call of the House was suspended.

The roll was then called and the House refused to pass House bill No. 177 by the following vote:

Yeas—Messrs. H. R. Allen, Austin, Booty, Camp, Chambers, Cole, Elam, Evans, Gant, Gaston, Grothaus, Harn, Hawkins, Jenkins, Jones, Kyle, Lacy, Lane, Leonard, Lyons, McLean, Miller, Pierson, Plumley, Polly, Posey, Putnam, Rainey, Robb, Robertson, Ross, Schlotman, Self, Shelburne, Simmons, Stirman, Weaver, Zapp—38.

Nays—Mr. Speaker, Abbott of Austin, Richard Allen, Burley, Cotton, Cox, Davis, Dorris, Dupree, Frauks, Gardiner, George, Hamilton, Johnson, Kendall, Locke, Lorance, McKee of Guadalupe, Medlock, Mitchell, Morris, Morrison, Moore of Harrison, Patten, Robinson, Schlickum, Schutze, Sheriff, Shoemaker, Slaughter, Stockbridge, Tegener, Tinsley, Van Noy, Williams of Colorado, Williams of Walker, York, Youngkin, Zeller—39.